television broadcasts and cable communications. This cost characteristic translates into an availability and accessibility issue.

With digital television, at least currently, not being "uniquely pervasive presence in the lives of all Americans"[23] or "uniquely accessible to children, even those too young to read"[24] it should be afforded a higher level of speech protection, even more than that allowed of cable communications. Content-based regulations, restrictions, or obligations imposed on digital television communications should only be justified by a compelling, legitimate government interest. Digital television, by its inherent characteristics, is due a heighten level of First Amendment protection and any regulation thereof should be evaluated under a strict scrutiny analysis. Under this analysis, there would always be a chance that some expression of speech might run counter to the greater interest of the counter, or that some compelled speech would further the collective societal interest, but those instances should be few and far between. The proper balance should still lie in applying a standard by which only the most compelling government interests, when applied using the least restrictive means possible, will override the interest in protecting free speech.

RIPENESS OF DIGITAL TELEVISION REGULATION

Digital transmission affords the opportunity and flexibility to offer high definition television (HDTV), several standard DTV channels, ancillary services, and any combination of them all. These new possibilities, however, are still not fully developed and only exist in the very early preliminary stages of digital technology. If generic, across-the-board regulations are passed without more concrete information as to the exact details of digital television, it is likely

[23] See FCC v. Pacifica Found., 438 U.S. 726 (1978).
[24] Id.

that they will be dangerously vague and clearly unconstitutional under a strict scrutiny analysis.[25] Such inevitable vagueness will result in an inconsistency among broadcasters that the Court will view as critical because it will be accompanied by a risk of a chilling effect on free speech.[26]

Regulation today of an uncertain digital era will also likely result in overbreadth effects. The Court has emphasized its commitment to making sure that statutes and regulations accomplish their purposes without imposing unnecessarily greater restrictions of speech.[27] Premature digital television regulation will exhibit overbreadth in two ways: in its infringement upon the First Amendment rights of adults, and in its application to such a broad spectrum of speech.

Digital television speech restrictions and obligations if enacted today will amount to "burn[ing] the house to roast the pig."[28] Adopting regulations today will accomplish little more than casting a dark shadow over free speech and inhibiting a large segment of the digital television community.[29] It is anything but clear as to what form these services will take in the digital era. With nothing more than mere speculation as to what path digital television will take, formulating regulations and public interest obligations is a premature fix for problems that have not yet come to fruition. While early establishment of debate and discussion on this topic can only help in arriving at workable solutions, the wiser choice is to wait. The actual effects of digital television must first be felt so that any regulation or forced obligation will bear some plausible relationship to the actualities of the service itself, rather than its potential.

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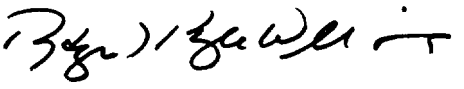
[25] See Reno v. ACLU, 117 S. Ct. 2329, 2346 (1997).
[26] Id. at 2344-45.
[27] See Denver Area Educ. Telecomm. Consortium, Inc. v. FCC, 116 S. Ct. 2374, 2385 (1996).
[28] See Sable Communications of Cal., Inc. v. FCC, 492 U.S. 115, 127 (1989)

CONCLUSION

For the reasons set forth above, I oppose any action imposing on broadcasters additional unique regulatory burdens during the preliminary transition stages from analog to digital communication. I urge you to carefully consider the inherent characteristics of digital television when evaluating the level of speech protection. Although public interest concerns and duties are important to our society, I advise caution in pursuing this path that remains obscured by speculation.

Respectfully Submitted,



Raymond Kyle Williams

[29] See Reno, 117 S. Ct. at 2350.

Justin R. Martin
834 Bluff Dr.
Knoxville, Tennessee 37919

March 16, 2000

Honorable Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Suite TW-A325
Washington, D.C. 20554

RE: MM Docket No. 99-360; FCC 99-390

Dear Mr. Salas,

Please find enclosed my Comment regarding the above referenced rulemaking. It is my feeling that the FCC's implementation of section 336 of the Communications Act of 1934 should consider current problems associated with analog TV broadcast of sexually explicit video programming. The implementation procedures and policies governing Digital Television (DTV) during "transition period" (MM Docket No. 99-360; FCC 99-390) must be evaluated in the context of analog TV and not in a vacuum. Until the technological advances promised by DTV are uniformly installed in all American homes, an event which is only projected to occur, DTV broadcasting regulations will occupy a unique position in the fabric of our society.

It is vitally important that DTV broadcaster recognize and respond to the public's "interest, convenience, and necessity" during the "transition period." The rulemaking notice that you have issued concerning section 336 noted that "the Act's central policy's provides that DTV broadcasters consider the public interest of the license community to which they broadcast." DTV broadcast regulations should confront the concerns raised by signal bleed of sexually explicit video programming because DTV and analog TV "simulcasts" will overlap for some time to come.

The transition from analog to digital TV is optimistically set for completion in 2006-07. However, it is contemplated that some, if not many viewers, will continue to receive analog broadcasts even in 2007 and beyond. In fact, the Commission itself has provided that broadcasters will retain analog broadcast rights in areas where less that 85% of the viewers receive digital television.

Digital TV will doubtlessly one day extinguish the controversy and litigation over signal bleed of sexually explicit programming. Yet in the meanwhile, common sense dictates that DTV broadcasters should not escape their duty to benefit the public's

interests just because signal bleed is *projected* to cease causing problems in the future. Specifically, analog and DTV simulcasters should be barred from relying on DTV to exculpate them from the substantial threat to parental autonomy caused by signal bleed. Instead, DTV broadcasters should at least be required to act without haste to correct the problems associated with partially scrambled signals viewed by children and adolescents by informing parents of the existence and severity of signal bleed. DTV broadcasters could provide adequate notice in the monthly billing statements received by cable subscribers, not to mention public access TV channels, the internet and public files.

The signal bleed issue is hotly contested, with both the Judiciary and Congress considering cases and statutory reformation respectively. But regardless of their decisions, the Commission should decrease the potential for harm from signal bleed to children by requiring DTV and analog TV broadcasters to serve notice of the phenomena to all cable subscribers. To further its goal of promoting the common good of the public interest, the Commission should require notice from adult oriented simulcasters to discontinue to the ongoing threat to a parent's constitutional right to raise their children as they see fit. This issue deserves resolution because satellite and digital TV offer only the hope, but not the promise of resolving all of the problems with signal bleed.

Sincerely,

Justin R. Martin

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

COMMENTS OF JUSTIN MARTIN
REGARDING PUBLIC INTEREST OBLIGATIONS
OF TELEVISION BROADCAST LICENSES

INTRODUCTION AND BACKGROUND

Section 336 (d) of the Communications Act of 1934 plainly states that a "television licensee shall establish that all of its program services on the existing or advanced spectrum are in the public interest." In the twilight of the analog TV era, a recent flurry of activity amongst the Judicial and Congressional branches of government established that the issues created by analog TV broadcasting will continue to be of relevant concern in the 21st century. Through the instant rulemaking the FCC has the unusual opportunity to create a policy equally binding in force and effect on both analog and DTV broadcasters. Thus, the FCC's rulemaking construction of section 336 should address the residual problems embedded within analog TV when it issues its DTV regulations.

By addressing the public interest responsibilities of both DTV and analog TV broadcasters, the FCC could provide a flexible policy accountable for both types of sexually explicit analog broadcasts through the transition period and beyond. At the same time, the FCC will institute a policy malleable enough to account for unknown future problems, e.g., communities that receive DTV transmissions after 2007 or viewing areas that never receive DTV broadcasts. Finally, this rulemaking procedure provides for the future of DTV by ensuring that the transition period accounts for future technological advances, e.g., satellite intercept devices

or DTV de-scramblers, which could resurrect the current problems associated with analog TV broadcasts of sexually explicit programming.

DISCUSSION

Before I illustrate section 561 of the 1996 Communications Decency Act's role (hereafter the Telecommunications Act) in the FCC's implementation of section 336 of the Communications Act of 1934, it is helpful to first examine section 561 itself. Section 561 currently governs the standards of analog transmission of sexually explicit audiovisual broadcasts. Section 561(a) of the Telecommunications Act requires all multi-signal video programming distributors to scramble sexually explicit "adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming." 47 U.S.C. § 561(a) (1996). Section 561(b) of the Act required that multi-signal or multi-channel operators (MSOs) who fail to comply with section 561(a) shall not provide "such programming during the hours of the day when . . . a significant number of children are likely to view it." 47 U.S.C.A. § 561(b) (1996). The practice instituted in § 561(b) is commonly known as time channeling.[1] The Federal Communications Commission set that period between 10:00 p.m. to 6:00 a.m.[2] Over the past three years, the federal courts decided that section 561 creates an unconstitutional limitation on the free speech rights of MSOs. Playboy Entertainment Corp., Inc. v. United States, 918 F.Supp. 813 (D. Del. Mar. 7, 1996)(Playboy I) and Playboy Entertainment Corp., Inc. v. United States, 30 F.Supp.2d 702 (D. Del. Dec. 28, 1998)(Playboy II). The Supreme Court affirmed Playboy II without opinion.[3] However, the Court also granted a writ of *certiorari* to decide the constitutional issues contained

[1] See Playboy II at 777.

[2] Id.

[3] See 520 U.S. 1141 (1996).

in Playboy I and Playboy II once and for all in the Spring 2000 term. United States v. Playboy Entertainment Group, Inc., 119 S. Ct. 2365 (1999). In addition, the 106th Congress itself is currently considering amending section 561 of the Act.[4] This relatively lively spurt of energy emitted by Congress and the Judiciary suggests that the signal bleed issue is alive and breathing both now and for the forseeable future.

In implementing the purpose of the Federal Communications Commission Act and the subsequent statutory laws written by Congress governing analog television broadcasts under Title 47, it is incumbent upon the FCC to consider Congress' goals for DTV in the context of residual analog TV problems like signal bleed. Congress' section 336 instruction to the Commission requiring that DTV broadcasters to serve the 'public interest, convenience and necessity' cannot be fulfilled without accounting for the problems engendered by analog transmission of sexually explicit adult video programming because analog broadcasting will continue to be broadcast until at least until 2007.

The current flurry of activity in Congress regarding communications decency and signal bleed and suggests that the current regulations fail to enact Congress' intent. Of course it is possible that Congress realized it imposed a more restrictive means necessary when it passed section 561 than the government's regulatory interest permitted. Indeed, the Judiciary's interest in the constitutionality of section 561 may render Congress' amendment efforts moot. At the same time, Congress clearly enunciated its viewpoint that broadcasters who transmit partially unscrambled or wholly unscrambled sexually explicit video programming fail to serve the public's interests or needs. Therefore, the FCC should heed section 561 when considering the

[4] See 1999 H.R. 3085, 106th CONGRESS, 1st Session (Oct. 14, 1999) (Providing discretionary spending offsets for fiscal year 2000), and 1999 H.R. 2834, 106th CONGRESS, 1st Session (Sept. 9, 1999) (Amending the Communications Act of 1934 to clarify State and local authority

manner and method by which section 336 shall be given effect. Nothing associated with the impending controversy over section 561 suggests that the FCC's legislative mandate under section 336 is in jeopardy, or, even more to the point, rendered moot. The enactment of section 561 makes it clear that Congress and its constituents fear the consequences of children viewing unregulated transmission of sexually explicit adult video programming. Therefore, the Commission must implement section 336's intent, while keeping the implications of section 561 in mind when implementing section 336 in the theater of DTV. In fact, the inherent authority of section 336 clarifies that the Commission must regulate all broadcasting in the name of the public interest, which thereby requires that the conduct of both DTV and analog broadcasters of sexually explicit programming submit to the same standard. The key, therefore, is doing so in such a manner that the Commission's actions withstand even the strictest scrutiny by the judiciary. Luckily, this goal is possible.

ANALOG SOLUTIONS

Even the judicial decisions interpreting section 561 admitted that would be *possible* for the FCC to enforce section 336 in such a way that section 561's overall spirit is incorporated in a narrowly tailored and least restrictive means. The Playboy II court examined three ways by which adult oriented transmissions can be "completely scrambled."[5] Of the three methods, lockboxes and negative traps proved to be overly burdensome because of the associated ecnomic costs. However, the Playboy II court indicated that the third alternative, positive traps, could be both effective and economical. But Playboy II dismissed the latter alternative as overly

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to regulate the placement, construction, and modification of broadcast transmission and telecommunications facilities).

[5] Playboy II at 780

burdensome to adult broadcasters because it constrained "the impulse nature of purchasing adult programming" such that lost revenues could not be recouped.

But here's how we could prevent children and immature minors from receiving signal bleed during the transition from analog to digital TV. The proper analysis should ask two questions. First, what are the needs and interests of Playboy's community of license, i.e., what obligation, if any, does Playboy have to its subscribers considering the nature of its programming content. In this case, Playboy's obligation is obviously very low because naked frolicking and orgasms are exactly the reason that viewers pay to watch the Playboy channel. If their children see explicit sexual acts performed, it is because those viewers have assumed the risk that a subscription to Playboy might reveal the vagaries of sexual intercourse to their children before the public schools, Catholic nuns they themselves intended.

The second question asks, therefore, what needs and interests comprise the public interest of the community receiving partially scrambled television feeds from Playboy? The community of license in this sense is different from the community of paying Playboy subscribers because it includes the vast public community of cable subscribers at large. And it is this majority of cable viewers that are affected by signal bleed. In the latter instance, viewers unaware of signal bleed should be educated about it, and, moreover, all cable subscribers should have the option of blocking signal bleeds if it is economically feasible. Signal bleeding should not act as free advertising or act a teaser for the Playboy channel. If regulation of signal bleed is ultimately adjudicated by the Supreme Court to be a impermissible content restriction under the First Amendment, however, Playboy should still be required to provide notice to all of its affected cable subscribers regarding nature and content of partial scrambling. This remedy should be born by both DTV and analog broadcasters because the households may most likely to subscribe

to DTV are also the most likely to own multiple televisions, including analog televisions that will continue to be affected by signal bleed.

The notice expenses should be born both by the cable operator and broadcasters like Playboy,[6] since they each profit from the considerable publicity gained from a partially obscured signals featuring orgiastic moaning. As the recent movie *American Pie* demonstrated, the graphic nature of the acts depicted is often substantial enough to provide "viewers" with considerable "stimulation" even though the signal is technically "scrambled."

Playboy and other adult oriented stations aren't in the same club as other "premium" channels like HBO, Showtime and Cinemax. Children and adolescents, whose attentions spans are ever on the downturn, simply aren't willing to listen to a movie smeared by squiggly lines and random half pictures in the hope of a partially exposed breast or a few muttered moans and groans of the course of a two hour movie with real acting (if the acting between sex xcenes were better, then they might). However, when partial audio and video feeds provide constant sexual feedback to the viewer, the pull of signal bleed may be strong enough to captivate a young audience. Whether we want Playboy to educate children about sex, or whether we would prefer that our public schools do so is an important matter because parents are deprived of due process in the former setting. In the case of signal bleed, parents of children and teenagers, who view Playboy's partially bled" signal, are bereft of the notice and opportunity to be heard regarding their First Amendment rights to oversee the development of their children into adults. See Wisconsin v. Yoder, 406 U.S. 205 (1972). In contrast, parent teacher's association board meetings, school referendums and formal requirements imposed on County Boards of Education

[6] Other adult oriented channels include AdulTVision (owned by the Playboy Entertainment Group), Adam & Eve, and Spice, (the latter two are both owned by Graff Pay-Per- View).

provide substantial procedural safeguards concerning the substantive issues concerning sexual education that the Playboy channel lacks.

The Playboy channel stands as an end run around Yoder's constitutionally approved process, which impliedly violates the restriction placed on each and every broadcaster to consider the "public's interest" and the "fundamental needs and interests of its community of license." Recipients of signal bleed are the unwilling prisoners of the broadcaster and should at least receive notice, if not the choice to black out such signals where economically feasible. Thus, notices informing subscribers of signal bleed and its effects in sexually explicit programming should accompany each billing statement submitted by one's cable company. In addition, Playboy should register with websites that distribute public interest information to interested parents and cable subscribers. These notices should also comprise part of the FCC's public file for Playboy's commercial TV broadcast account and all viewers should have access to this information. Finally, notice of sexually explicit signal bleed should be prominently displayed and easily located on channels that display public information. If Playboy ever begins to offer internet access through its DTV channel, the notices should be accordingly modified. The costs and burdens associated with these public interest obligations under section 336 may even encourage Playboy to fully scramble its channels, which it has argued would constitute and excessive cost but which in reality might just be smokescreen.

A. CONSTITUTIONAL CONCERNS

Noticing all analog and DTV viewers of the possibility of signal bleed is not an infringement of First Amendment content in programming. Requiring Playboy and its brethren to serve the public interest by informing the cable subscription community does not ask it to change or alter its content, thereby causing a putative First Amendment free speech intrusion.

Instead, Playboy is merely asked to inform cable subscribers and satellite viewers of the nature of its programming and inform its users that any concerns over signal bleed can be remedied by blacking out the signal in its entirety. Even if requiring notice and information from Playboy to its viewers is found to be an intrusion, this remedy is narrowly tailored and is the least restrictive means possible of enforcing Congressional mandate that DTV broadcasters serve the needs and interest of the public. Any substantive deprivation of rights are therefore *de minimus*.

B. ANALOG TV REMAINS IMPORTANT IN SPITE OF SATELLITE BROADCASTING AND DTV

The development and implementation of new technologies fails to sufficiently ensure that the phenomenon of signal bleed will ever become totally non-existent. Direct broadcast satellite technology[7] and DTV promises to end signal bleed only to the extent that all the televisions within a single household can accommodate digital satellite technology. Section 561 has not been specifically amended to encompass DTV and or satellites, but regulation of these forms of broadcasting could be equally well managed under the auspices of the FCC's regulation of Section 361 of the 1934 Communications Act. Even if a household receives only DTV or satellite TV broadcasts, such subscribers may be indirectly impacted by their children's friends who visit the same sexually explicit programming at their friends' home(s).

Digital cable service, is also an advanced technology eliminates signal bleed. The Playboy II court noted that approximately 2 million households already receive such service, and that MSOs will most likely make the premium channels the first channels they switch over to digital cable. The upgrade from traditional coaxial cable to hybrid fiber-optic coaxial cable is estimated to cost MSOs collectively close to $25 billion, which is peanuts compared to the

[7] Direct broadcast satellite systems include such services as DirecTV, Primestar, and EchoStar Communications. However, DirecTV, DISH Network, and Primestar all have Playboy Television available 24 hours per day, in addition to pay-per-view services and 24 hour availability.

maximum estimated cost of complying with section 561 (one billion max). Forcing DTV and analog TV MSOs to comply with the spirit of section 561 would not result in throwing money away, even during the transition period. It will take at least six to seven years to complete the transition, during which time millions of children will be bombarded by the unnecessary and unwanted invasion of adult themed signal bleed. Any delays in construction of the DTV web will extend the expected completion date well beyond the contemplated date of 2006-07. In addition, signal bleed will continue to plague areas that are slow and/or resistant to the DTV changeover. Finally, the Commission has already decided that analog TV will continue to be broadcast wherever DTV is received by fewer than 85% of the households. There is a dramatic contrast between requiring MSOs to furnish notice to parents about the nature and effect of sexually explicit signal bleed and permitting children or immature minors to watch sexually explicit adult programming without the knowledge or approval of parents whose First Amendment rights have been deprived.

CONCLUSION

Ultimately, section 561 may be found unconstitutional. Yet the courts in Playboy I and Playboy II found that complete scrambling could be achieved for a mere fraction of the costs of implementing DTV or satellite TV. Thus, at the very least, analog TV and DTV MSOs should notice parents about the nature and occurrence of signal bleed. The costs of noticing parents as to the nature and effect of signal bleed are cheap and the intrusion is *de minimus*. The mandate of section 336 requires that the FCC respond by subjecting both DTV and analog TV broadcasters to the same standard of disclosure in order to meet the public's interest as opposed to profits and fiscal bottom lines. We should not limit notice requirements affecting subscribers subjected to signal bleed to the Playboy channel alone, but should apply it to all "premium"

channels that air sexually explicit programs during daytime and early evening hours. Since at least four channels program virtually 100% sexually explicit adult programming, [8] it is the signal bleed from channels like these that section 561 was designed to block but which section 361 can remedy.

[8] See note 6 *infra* and accompanying text.

Jama McMurray
March 17, 2000
Administrative Law

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

COMMENTS ON THE PUBLIC INTEREST OBLIGATIONS OF TELEVISION BROADCASTING LICENSEES

Introduction

On the 26th of January 2000, the Federal Communications Commission published its notice of proposed rulemaking for comments on how broadcasters can best serve the public interest as the switch to digital transmittion technology is made. Notice of Proposed Rulemaking, 65 Fed. Reg. 4211 (Jan. 26, 2000). The Commission's document is based on recommendations and proposals from such groups/ persons as the Presidents Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters, People for Better TV, and Vice President Al Gore. The Commission is now requesting ideas from the general public and broadcasters on the best way to maintain a public interest standard during the transition to digital television.

My name is Jama McMurray. I am a third year law student at the University of Tennessee College of Law. These comments are based on a requirement of an administrative law class taught by Professor Glenn Reynolds. I will attempt to comment on the issue of Enhancing Access to the Media in areas such as disability and diversity.

Television is by far the means by which most Americans obtain news, information and entertainment. Even those who do not yet own a computer usually own at least one television. Broadcasters have a duty of controlling what is aired on these stations and the Federal Communications Commission has been given the authority to enforce the public interest requirement. The only way the Federal Communications Commission can issue, renew, or approve a transfer of a license is if broadcasters comply with an affirmative public interest program. With the arrival of digital television, public interest obligations have been revisited. Although the Commission may adopt new public interest rules, some argue that these rules should change to fit the opportunities provided by digital channels, while others argue that there is no need to change the rules.

In 1998, the President's Advisory Committee on the Public Interest Obligation of Digital Television Broadcasters provided ten separate recommendations on public interest obligations that digital television broadasters should assume. In 1999, People for Better TV requested that the Commission have a rulemaking proceeding to determine what the obligations are. Still others are dealing with issues that are not directly related but have a connetion with digital television.

The Commission seeks comments on how broadcasters can make a smooth transition to digital television while still serving the public interest. Areas of interest include challenges unique to the digital era, how to respond to the communities, and enhancing access to the media. With the introduction of digital television the original rules should be amended to change so that the public can be given the newest and best technology out there. Also the fields related to digital television should open to those who before have been limited in their access to the ecomonic opprotunities to the media.

Discussion

While not a direct result of the transition to digital television, a long standing goal of the Federal Communication Commission has always been to broaden access to the media to include everyone reqardless of race, gender, ethnicity or disability.

Disability

Many years ago if a person were to have a broken leg or be confined to a bedfast for a period of time, he would only be able to watch whatever channel was on or no television unless there were someone there to change the channel or turn it on for him. Then came the remote control which enabled him to have access to the power and all the channels from bed or a chair with the push of a button. Assuming, that is, that he had working batteries.

How much more distressing it must be for those with hearing or vision imparements. Every effort should be made to provide these people with the maximum access available for them to enjoy television programing as any other citizen may. A few years ago, businesses, schools, state parks, etc. were required to provide access to our handicapped persons. There are many severly handicapped and older citizens that may not be able to take advantage of these improvements because they are confined to their homes. Why should thearea providing the most information to Americans be exempt from more accessibility?

Closed captioning has brought some access to the hearing impared over the past few years. However, not every type of programming is included. Several areas have been exempt

from the requirements. Among those exemptions are: advertisements of less than five minutes, non English programming, promotional and public service announcements, late night programming, and political programming. [1] Not every average citizen is interested in the same type of programming or watches television at the same time. Why should the disabled receive only a particular base of programming. Do we assume that all handicapped persons go to bed at 9:00 PM? Are all handicapped persons English speaking? The Commission has called for the gradual expansion of PSA's and political programming. This is a step forward but it appears that there should be an expansion into more of a variety of different types of programs and timing for the shows that are closed captioned. While funds and resources may not be available to immediately provide handicap access to every program, there should at least be an effort made to provide at least some access to all types.

The 1996 Act requires "new" programming to be closed captioned by 2006 in phases. Older "library"[2] programs have a ten year set limit. The Federal Communications Commission is to measure compliance with the rules quarterly.

However, there may be special exemptions given in certain instances. New networks have up to four years after launching to provide closed captioning. Those broadcasters with gross revenues of less than three million qualigy for exemptions and the larger entities do not have to exceed two percent of revenues from the previous year.

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[1] 498 PLI/Pat 73, "Developments in Communications Law", Richard E. Wiley, November 1997.

[2] 498 PLI/Pat 73. New programming is any that was published or exhibited after January 1, 1998. Library programming is any published or exhibited before that date.

With the coming of digital television, video description will be more easily available and should be required to have a phase in and compliane schedule similar to that of closed captioning. The Commission shoudl impose different requirements on digital television broadcasters in accord with the advances in technology. Perhaps the phase-in scheduling should be revised to a shortened period of time if possible. As People for Better TV suggest, every effort should be made to probide "expansion of services to persons with disabilities". Perhaps where there are undue financial burders on broadcasters a supplimental fund may be available and/ or trade-offs made in other areas.

Diversity

Another goal of broadcasting is that of diversity of viewpoint, ownership, and employment. It is unlawful for an employer to refuse to hire, discharge, or discriminate against any individual because of race, color, religion, sex, or national origin.[3]

People for better TV has suggested that broadcasters for digital television "exploit digital technology to reflect the diversity of their communities". The changes brought by digital television also bring more employment opportunities and opportunities for expanded diversity in programming. So long as the minorities and women are adequately trained to perform the jobs, the creative business arrangements, inclucing channel-leasing and partnerships, are a good start to providing a more diverse enviromnent within broadcasting. Congress has found that dispite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decision making positions in business. The glass ceiling

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[3] 42 U.S.C. §2000e-2. Unlawful employment practices.

commission was established in order to study policies to improve such access.[4] The Agency Committee has suggested that broadcasters encourage effective participation by minorities and women in all areas and in particular, gaining these groups access to more of the decision-making positions in the industry.

The representation of minority groups in higher positions should have a positive effect on programming also. Just as all handicappped persons should not be limited in the programming they have access to, nor should these minority groups. Digital television will provide the availability of greater programming capability. Therefore, there should be no reason that there cannot be a healthy blend of programming for all viewers.

In this country we are lucky that we have the right to have and express different views. Even though everyone's view may not be represented by a decision-making employee, programs and research groups should be set up to study and see that the broadest diversity possible be available in programming. Also the lines of communication should be kept open with the public and a system should be in place to make sure the public opinion and comments are recognized.

Although different in many aspects, the issues of diversity and disacility are similar in one way. Provisions should be made to provide both complete access to media. The disabled should have means available where they can enjoy programming while minority groups should have access to employment opportunities and dicision making over the programming. The advancement of digital television should open the door for many new opportunities for all.

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[4] Glass Ceiling Act of 1991, §202(a)(1)

Conclusion

With the changing of technology to include advances such as digital television, an evaluation of the rules on public interest programming and all other areas of access to the media should be refined to reflect the advancements in society. Everything possible should be done to provide our handicapped and economically disadvantaged citizens the fullest access possible to the media and new technologies.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

COMMENTS OF JILL R. SCHMIDTKE REGARDING MM DOCKET NO. 99-360; FCC 99-390 PUBLIC INTEREST OBLIGATIONS OF TELEVISION BROADCAST LICENSEES

INTRODUCTION AND BACKGROUND

On January 26, 2000, the Federal Communications Commission published a notice of proposed rulemaking soliciting comment on how broadcasters can best serve the public interest as they transition to digital transmission technology. The Commission acknowledged that television is a "primary source" of news and information that have a great impact on Americans and in particular children. As a third year law student and mother of three small children I am especially concerned with the role the media plays in serving the public. In particular, I would like to respond to the Commission's request for comment on the role of digital television (DTV) in regards to children's programming and the obligations set forth in the Children's Television Act of 1990.

Currently the Federal Communications Commission takes a limited role in ensuring compliance with the Children's Television Act of 1990 by non-digital licensees. Although the Commission establishes certain minimum standards that must be met it does not extend its authority to micro-management of individual licensees. Under the Act a licensee meets its obligation to children's programing when it has aired at least three hours per week of "Core Programming" during the hours of 7:00 a.m. to 10:00 p.m., limits the amount of commercials aimed at children, limits "adult content" programming

to appropriate time slots, and publishes the educational and informational objectives in writing in the licensee's Children's Television Programming Report.[1] While I do not advocate an increase in the responsibility of individual licensees, I do urge the Committee and Congress to take the necessary measures to ensure that the current requirements for Children's programming continue to be met in the digital era.

DISCUSSION

It has long been established that a primary goal of the Communications Act of 1934 is to ensure that a public interest is served by broadcast licensees. A component of this public service requirement is that broadcasters serve the educational and informational needs of children with programming specifically designed for that purpose.[2] This view was reinforced when Congress passed the Children's Television Act of 1990 to ensure broadcasters complied with this component of the public interest standard.

In the digital age this requirement can be a complex and difficult undertaking for individual licensees that broadcast on multiple band frequencies or "multi-cast." As a result it is unclear whether or not the F.C.C. should demand that children's programming be provided on each digital band that an individual licensee owns or whether programming on one band is sufficient to meet the requirements of the Children's

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[1] **47 C.F.R. § 73.671**

[2] **16 Cardozo Arts & Ent. L.J. 341, *342**

Television Act of 1990 (CTA). I believe that individual licensees can meet the obligations set forth in the CTA by broadcasting children's programming on one of their band width frequencies instead of being required to broadcast the requisite three hours per week on all of their band width frequencies.

With the advent of cable we have seen the success of tailored programming stations such as ESPN, MTV, Lifetime, and Nickelodeon. These channels target a specific audience with a stylized viewing format. When you turn on ESPN you know you are getting sports and nothing else. You don't want or expect anything else. But in the same turn, if you are a parent looking for quality television for your children you know that you can turn to Nickelodeon, the Disney channel, or PBS for the kind of educational programming suitable for children. Channels like Nickelodeon and Disney has been a commercial success in the American television market. It would probably interest many "Nickelodeon" moms that Nickelodeon is owned and operated by MTV. It is possible for licensees who participate in adult content channels to also meet their public interest obligation in the form of channels dedicated to children centered viewing. I, as a mother, would be uncomfortable with my three-year-old being encouraged to watch MTV through "child friendly" programming.

Although I believe that the programming requirement can be met by an individual licensee broadcasting children's programming on only one of its band widths, I would enforce the limit on children's advertising and the limit on adult content programming on all bandwidths held by the individual licensee. The CTA recognized the impressionability of children when it set out the guidelines for children's programming. It specifically places restrictions on advertising and content because children cannot